IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD.

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST

TWO THOUSAND AND FOUR.

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

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W.P.No. 12757 of 2004

Between:

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1. D. Bhargav, S/o. Surya Prasad,

Aged about 34 years, Occupation: Clerk,

Kaspajagannadhapuram Primary Agricultural

Cooperative Society Limited, No. M91,

Madugula Mandal, Visakhapatnam District.

2. K. Eswara Rao, S/o. Ramamurthy,

Aged about 36 years, Occupation: Clerk,

Kaspajagannadhapuram Primary Agricultural

Cooperative Society Limited,No.M91,

Madugula Mandal, Visakhapatnam District.

3. L. Maheswara Rao, S/o. L. Ramana,

Aged about 30 years, Occupation: Clerk,

Kaspajagannadhapuram Primary Agricultural

Cooperative Society Limited, No. M91,

Madugula Mandal, Visakhapatnam District.

4. M. Mary, D/o. Yarraiah,

Aged about 20 years, Occupation: Attender,

Kaspajagannadhapuram Primary Agricultural

Cooperative Society Limited, No. M91,

Madugula Mandal, Visakhapatnam District.

….Petitioners.

AND

1. The Government of Andhra Pradesh,

   Represented by its Secretary,

   Cooperative Department,

   Secretariat, Hyderabad.

2. The District Cooperative Officer,

   Visakhapatnam, Visakhapatnam District.

3. The Divisional Cooperative Officer,

   Yelamanchili, Visakhapatnam District.

4. The Person Incharge,

   Kaspajagannadhapuram Primary Agricultural

   Cooperative Society Limited, No. M91,

   Madugula Mandal, Visakhapatnam District.

….Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring the impugned proceedings issued by the 4th respondent dated 1-7-2004 at the instance of respondents 1 to 3 as illegal, arbitrary and violative of principles of natural justice apart from contrary to Articles 14, 19(1)(g) and 21 of the Constitution of India besides contravention of the provisions of the A.P. Cooperative Societies Act and Rules made there under.

Counsel for the Petitioners: Mr. V.Ajay Kumar.

Counsel for Respondent Nos. 1 to 3: GP for Cooperation.

Counsel for Respondent No.4: Mr. E.Sambasiva Pratap.

The Court made the following Order:

Petitioner Nos 1 to 3 are working as clerks and petitioner No.4 is working as an attender in the 4th respondent-society.

Petitioners question the proceedings of the 4th respondent-society dated 1-7-2004 terminating their services on the ground that their appointments were not approved by the Registrar of Cooperative Societies in accordance with the provisions of Section 116 (c) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act").

Learned counsel appearing for the petitioners submitted that the appointments of the petitioners have been made after obtaining prior approval of the third respondent-Divisional Cooperative Officer, Yelamanchili and therefore, it cannot be said that their appointments were made contrary to Section 116 (c) of the Act.

The learned counsel for the petitioners did not place before this Court any material to show that the 4th respondent-society fixed the staffing pattern, qualifications, pay scales and other allowances of its employees with the prior approval of the Registrar of Cooperative Societies subject to the condition that the expenditure towards pay and allowances of the employees is not exceeding two percent of the working capital or thirty percent of the Gross profit in terms of actuals in a year which ever is less and therefore, it cannot be said that the appointments of the petitioners were made in conformity with the provisions of Section 116 (c)(1) of the Act. Unless the 4th respondent-society fixes the staffing pattern, qualifications, pay scales and other allowances of its employees and gets the approval of the Registrar of Cooperative Societies, it cannot be said that the petitioners are regular employees since they are working contrary to the provisions of Section 116 (c) (1) of the Act and therefore, I am of the view that their services are only temporary.

However, I have taken a view in the judgment in W.P.No.3171 of 2003 and batch dated 30-8-2004 that the Primary Agricultural Cooperative Society Limited is not a "State" within the meaning of Article 12 of the Constitution of India and the

societies are not amenable to writ jurisdiction under Article 226 of the Constitution of India. Therefore, no writ lies against the society.

In view the above, the writ petition is dismissed. However, it is made clear that if the society is running on viable conditions and fulfilling the stipulations as contemplated under Section 116 (c)(1) of the Act, it is open for the 4th respondent-society to fix the staffing pattern, qualifications, pay scales and other allowances and send the proposals to get the approval of the Registrar of Cooperative Societies so as to continue the required staff for its functioning. No costs.

30-8-2004

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To,

1. The Government of Andhra Pradesh,

Represented by its Secretary,

Cooperative Department,

Secretariat, Hyderabad.

2. The District Cooperative Officer,

Visakhapatnam, Visakhapatnam District.

3. The Divisional Cooperative Officer,

Yelamanchili, Visakhapatnam District.

4. The Person Incharge,

   Kaspajagannadhapuram Primary Agricultural

   Cooperative Society Limited, Limited No. M91,

   Madugula Mandal, Visakhapatnam District.

5. Two CCs to Govt. Pleader for Cooperation, High Court of Andhra Pradesh(out)

6. Two CD copies.